

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ESTATE OF JESSE AGUIRRE, ET. AL,

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v.

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SA-15-CV-00371-DAE

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CITY OF SAN ANTONIO; ET. AL.

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**APPENDIX TO DEFENDANTS CITY OF SAN ANTONIO, OFFICER CRISTINA  
GONZALES, OFFICER ROBERTO MENDEZ, OFFICER JENNIFER MORGAN,  
OFFICER BETTINA ARREDONDO, AND OFFICER BENITO JUAREZ'S  
MOTION FOR SUMMARY JUDGMENT**

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**I.  
PROCEDURAL BACKGROUND**

On May 8, 2015 Plaintiffs filed their Original Petition and Request for Disclosure.<sup>1</sup> Defendants Officer Cristina Gonzales, Officer Roberto Mendez, Officer Jennifer Morgan, Officer Bettina Arredondo, Officer Ronald Haley, Officer Benito Juarez, Officer Robert Encina And Officer Douglas Greene removed the case to federal court on May 8, 2015.<sup>2</sup> The City of San Antonio filed its original answer on May 12, 2015<sup>3</sup> On May 15, 2015, the Individual Defendants filed their original answer.<sup>4</sup> On June 22, 2015 the Court issued its initial scheduling order.<sup>5</sup> On October 30, 2015 the individual defendants filed an opposed motion for leave to file their first amended answer.<sup>6</sup> After a text order granting the motion for leave, the individual defendants filed their first amended answer on November 9, 2015.<sup>7</sup> On November 25, 2015 the Defendants filed a motion to strike Plaintiffs'

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<sup>1</sup> Docket #1-1.

<sup>2</sup> Docket #1.

<sup>3</sup> Docket #2.

<sup>4</sup> Docket #4.

<sup>5</sup> Docket #7.

<sup>6</sup> Docket #14.

<sup>7</sup> Docket #18.

experts or, alternatively to compel complete designation of Plaintiffs' experts.<sup>8</sup> On December 4, 2015 Plaintiffs filed a motion to extend scheduling order deadlines and their response to Defendants' motion to strike Plaintiffs' expert.<sup>9</sup> On December 07, 2015 the Court issued its first amended scheduling order.<sup>10</sup> On April 6, 2016 the Plaintiffs filed a joint motion to extend the scheduling order deadlines.<sup>11</sup> On April 8, 2016 the Court denied the joint motion to extend the scheduling order deadlines.<sup>12</sup> On May 19, 2016 the Plaintiffs filed a motion to extend the scheduling order deadlines.<sup>13</sup> The court granted the motion and issued a new scheduling order on May 20, 2016.<sup>14</sup> On September 30, 2016 the Defendants filed a motion to amend the scheduling order to extend the dispositive motion deadlines<sup>15</sup> which was granted by the court on September 6, 2016.<sup>16</sup> On October 19, 2016 the Defendants filed a second motion to amend the scheduling order to extend the dispositive motion deadlines<sup>17</sup> which was granted by the court on October 20, 2016.<sup>18</sup> On October 24, 2016 the Plaintiffs filed a Stipulation of Dismissal as to Defendants Officer Ronald Haley, Officer Robert Encina and Officer Douglas Greene.<sup>19</sup>

## II. STATEMENT OF EXHIBITS

In support of Defendants' Motions for Summary Judgment, Defendants have attached hereto and incorporated herein for all purposes, the following summary judgment evidence:

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<sup>8</sup> Docket #19.

<sup>9</sup> Docket #20.

<sup>10</sup> Docket #21.

<sup>11</sup> Docket #34.

<sup>12</sup> Docket #38.

<sup>13</sup> Docket #39.

<sup>14</sup> Docket #40.

<sup>15</sup> Docket #45.

<sup>16</sup> Docket #46.

<sup>17</sup> Docket #48.

<sup>18</sup> Docket #49.

<sup>19</sup> Docket #50.

- Exhibit “A” Affidavit of Lt. Rene Gallegos, with the statement of Dominique Martinez, labeled as A-1; and, the audio interviews of Vincenta Pereira labeled as A-2 and Jessica Solis labeled as A-3;
- Exhibit “B” Deposition Excerpts of Tania Hernandez;
- Exhibit “C” Affidavit of Joel Nelson, with a portion of the police dispatch recording at the time of the incident made the basis of this lawsuit, labeled as C-1;
- Exhibit “D” Affidavit of Bettina Arredondo-Hernandez;
- Exhibit “E” Affidavit of Jennifer Morgan, with her COBAN recording, labeled as E-1;
- Exhibit “F” Affidavit of Cristina Gonzales, with her COBAN recording, labeled as F-1;
- Exhibit “G” Affidavit of Robert Mendez, with his COBAN recording, labeled as G-1;
- Exhibit “H” Affidavit of Benito Juarez
- Exhibit “I” Affidavit of Albert Ortiz;
- Exhibit “J” Affidavit of Dr. Vincent DiMaio;
- Exhibit “K” Affidavit of Rod McCutcheon;
- Exhibit “L” Records from the Bexar County Medical Examiner’s Office;
- Exhibit “M” Deposition excerpts of Jon Sabo;
- Exhibit “N” Affidavit of Jon Sabo;
- Exhibit “O” Deposition excerpts of Desi Rios; and,
- Exhibit “P” Affidavit of Gustavo Guzman.

### **III.** **BACKGROUND FACTS**

#### **PLAINTIFFS’ VERSION**

On April 12, 2013 several calls were made to 911 for a Hispanic man walking on Highway 90.<sup>20</sup> As officers headed to the scene there was a report of a Hispanic male leaving the scene of a

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<sup>20</sup> Docket 1-1, p. 9.

single vehicle accident and walking on the nearby highway while appearing disoriented.<sup>21</sup> When the officers reached the individual, later identified as Jesse Aguirre (hereinafter “Aguirre”), two female officers pulled out their weapons and began cursing obscenities at Aguirre while threatening to shoot him for no reason.<sup>22</sup> A male officer pulled out his TASER.<sup>23</sup> Plaintiffs claim even though Aguirre posed no resistance, the officers grabbed Aguirre, handcuffed him with his hands behind his back, and then flipped him over the highway divider directly onto his head.<sup>24</sup> The officers then picked Aguirre up and slammed him face down on the hood of a patrol vehicle even though Aguirre offered no resistance.<sup>25</sup> The officers then took Aguirre to the ground where he was facing the ground with his hands cuffed behind his back.<sup>26</sup> One officer bent Aguirre’s legs back and then sat on them.<sup>27</sup> Another officer then placed his knee on Aguirre’s upper back and neck, while still another officer used his open hand to press Aguirre’s face into the ground.<sup>28</sup>

Aguirre made repeated cries for help and told the officers he could not breath.<sup>29</sup> After several minutes, Aguirre stopped communicating and stopped moving.<sup>30</sup> Aguirre then lay motionless face down on the highway for several minutes while the officers had their body weight on him.<sup>31</sup> The officers finally realized Aguirre was not breathing.<sup>32</sup> The officers took off the handcuffs and turned Aguirre over on his back.<sup>33</sup> The officers watched him for several more

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at p. 10.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

minutes and then finally began emergency resuscitation procedures which had no effect because Aguirre had already expired.<sup>34</sup> EMS arrived but the paramedics were unable to revive Aguirre.<sup>35</sup>

## **DEFENDANTS' VERSION**

### THE INITIAL ACCIDENT

Dominique Martinez ("Martinez") had been dating Aguirre for about six or seven months.<sup>36</sup> Martinez stated Aguirre's mother had been very sick and Aguirre's brother had died two months before.<sup>37</sup> Aguirre told Martinez he would kill himself if his mother died.<sup>38</sup> Martinez claimed Aguirre was suicidal.<sup>39</sup> Martinez said that Aguirre had left the night before the incident and had apparently gone to his brother's gravesite.<sup>40</sup> Martinez was at her son's apartment and when Aguirre showed up there, he had a beer with him and appeared intoxicated.<sup>41</sup> Aguirre told Dominique he had been doing a little bit of crack cocaine.<sup>42</sup> They went to Martinez's mother's house to get some clothes and then went to Aguirre's mother's apartment where they stayed until they left to get some gas.<sup>43</sup> While at the gas station, Aguirre got on the phone with his sister.<sup>44</sup> After he hung up he told Martinez he could not live without his mother.<sup>45</sup> Martinez asked Aguirre, "What about me?"<sup>46</sup> Aguirre responded that if he died he was going to take Martinez with him.<sup>47</sup> Aguirre was driving really fast and he was intoxicated.<sup>48</sup> He was getting crazy and Martinez asked

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Exhibit A-1, p.1.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at p.2.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

to be let out of the car but Aguirre wouldn't stop.<sup>49</sup> The two of them were arguing and Aguirre floored the gas pedal and said he didn't want to live anymore and that they were both going to die.<sup>50</sup> They hit a curb which caused the steering wheel to spin and the car hit a fence and ran through yards.<sup>51</sup> As Aguirre floored the gas pedal, Martinez pushed the car into park and the car came to an abrupt stop.<sup>52</sup> Martinez stated the car was going toward people and she didn't want to hurt anyone so she put it in park.<sup>53</sup> Aguirre got out and started running through a yard toward the highway.<sup>54</sup> Martinez yelled at Aguirre to come back but he kept running so Martinez got in the front seat of the car and turned it around because she wanted to go after Aguirre.<sup>55</sup> Martinez lost sight of Aguirre.<sup>56</sup> Even though the car was damaged, Martinez was able to drive to a stop sign where she stayed until the police and EMS arrived.<sup>57</sup>

On April 12, 2013, Tania Hernandez (Hernandez) was at her uncle's house at 206 Hillrose at approximately 6:30 / 7:00 p.m.<sup>58</sup> She was talking outside with members of her family when they heard a loud noise coming from another aunt's house.<sup>59</sup> A vehicle had crashed into her aunt's fence.<sup>60</sup> Hernandez saw a vehicle with all the tires out coming into the dead end street where her uncle lives.<sup>61</sup> Hernandez could hear the sound of rims driving on concrete.<sup>62</sup> Hernandez thought the car was going to crash into her.<sup>63</sup> Hernandez could see a couple yelling and arguing with each

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Exhibit "B", p. 8, lines 19 -25.

<sup>59</sup> *Id.* at p. 9, lines 3-6.

<sup>60</sup> *Id.* at p. 10, line 18.

<sup>61</sup> *Id.* at p. 9, lines 7-12.

<sup>62</sup> *Id.* at p. 11, lines 17-20.

<sup>63</sup> *Id.* at p. 16, lines 10-12.

other until the guy (Aguirre) got out of the car and ran.<sup>64</sup> Hernandez was scared because she thought Aguirre was going to run toward her.<sup>65</sup> Hernandez called 9-1-1 and then followed Aguirre.<sup>66</sup> Hernandez saw Aguirre jump on the highway and watched him darting and avoiding the cars.<sup>67</sup> Hernandez witnessed Aguirre jump the center divider separating the traffic and then lost sight of him.<sup>68</sup> Hernandez approached the woman in the vehicle (Martinez) who told Hernandez, he (Aguirre) wanted to kill them both.<sup>69</sup> Hernandez thought Aguirre was drugged.<sup>70</sup> Hernandez also saw Martinez take some beer cans out of the vehicle and throw them to the neighbor's.<sup>71</sup> Hernandez also stated she smelled an odor of weed coming from the car.<sup>72</sup> Hernandez stated it was a hectic scene.<sup>73</sup>

#### THE OFFICERS' RESPONSE

Officer Bettina Arredondo

While on patrol, Officer Arredondo,<sup>74</sup> heard a call come out for an accident where a male drove a vehicle into a house or fence and then fled the scene.<sup>75</sup> Officer Arredondo headed to drive to the location given for the accident when she heard several more calls coming out for a male that fit the description of the male involved in the accident referenced above, who had by then been seen running in the area of Highway 90 and Cupples road.<sup>76</sup> As Officer Arredondo was driving west on the access road approaching Cupples road, a male in a vehicle flagged her down and said

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<sup>64</sup> *Id* at p. 9, line 13 -18.

<sup>65</sup> *Id* at p. 38, lines 8-9.

<sup>66</sup> *Id* at p 9, lines 23-24.

<sup>67</sup> *Id* at p 10, lines 3-4.

<sup>68</sup> *Id* at lines 7-9.

<sup>69</sup> *Id* at p. 18, lines 9-10,

<sup>70</sup> *Id.* at p. 20, line 18.

<sup>71</sup> *Id* at p. 24, lines 10-11.

<sup>72</sup> *Id* at p. 30, line 2.

<sup>73</sup> *Id* at p. 48, line 7.

<sup>74</sup> Since the time of the incident, Officer Bettina Arredondo got married and changed her name to Bettina Hernandez. Defendants will refer to her as "Arredondo" for the purpose of this motion.

<sup>75</sup> Exhibit "D", p. 1.

<sup>76</sup> *Id.* at pp. 1-2.

he had seen a man trying to run across Highway 90.<sup>77</sup> Officer Arredondo then received a call about a female in a black shirt and blue jeans trying to get a male off the highway.<sup>78</sup> The male was located behind her on the highway so she took the turnaround and drove east on Highway 90.<sup>79</sup> After she got on Highway 90, Officer Arredondo noticed a woman on foot wearing a black shirt and blue jeans on the side of the highway, whom she later identified as Vicenta Pereira.<sup>80</sup> Officer Arredondo stopped to talk to Ms. Pereira who told her she was trying to talk a man off the highway.<sup>81</sup> Traffic Officer Jennifer Morgan pulled up behind Officer Arredondo and briefly spoke with Officer Arredondo about the call regarding the man on Highway 90 but soon left to look for the man.<sup>82</sup> Shortly afterward, Officer Arredondo saw several officers driving eastbound on Highway 90. She thanked Ms. Pereira and told her she could leave.<sup>83</sup>

#### Officer Jennifer Morgan

Officer Morgan received a call for a male running in traffic on Highway 90 between Cupples and Zarzamora streets.<sup>84</sup> As she responded, she heard additional calls coming in regarding the male on the highway.<sup>85</sup> As Officer Morgan drove eastbound on Highway 90 just before the Zarzamora exit she stopped to talk to Officer Arredondo who was pulled over on the side of the highway.<sup>86</sup> The officers briefly talked about the call regarding the male seen running on Highway 90 and Officer Morgan then decided to check with the dispatcher to see if she could see the male on camera since the dispatcher has access to the Transguide cameras.<sup>87</sup> Officer Morgan heard

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<sup>77</sup> *Id.* at p. 2.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Exhibit "E", pp. 1-2.

<sup>85</sup> *Id.* at p. 2.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*



another call about a male in the area of General McMullen, which was behind her.<sup>88</sup> The traffic was heavy as Officer Morgan entered the eastbound traffic and headed toward the Zarzamora exit.<sup>89</sup>

Before she reached the Zarzamora exit Officer Morgan heard the sound of tires screeching.<sup>90</sup> She looked to her left and saw a male near the barrier that divides the east and westbound lanes of Highway 90 traffic.<sup>91</sup> It appeared to Officer Morgan the male was on drugs or some other substance because he appeared disoriented and not in his right state of mind.<sup>92</sup> The male was having difficulty walking and was throwing his arms in the air.<sup>93</sup> Officer Morgan saw the male start to walk forward and away from her vehicle.<sup>94</sup> He was stumbling and using the concrete divider to balance himself.<sup>95</sup> Officer Morgan asked for her cover officer to start using a rolling roadblock to slow traffic down so the male would not get run over.<sup>96</sup> Officer Morgan was concerned because she was right past a crest in the highway which made it difficult for oncoming traffic to see her or the male on the highway.<sup>97</sup> She saw the male start walking toward her direction and step into the fast lane of traffic.<sup>98</sup> A black car traveling in that lane had to swerve to avoid hitting him.<sup>99</sup> Officer Morgan already had her emergency lights on but she could not make her way across the lanes of traffic immediately because traffic on Highway 90 was so heavy.<sup>100</sup> She

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at pp. 2-3.

<sup>98</sup> *Id.* at p. 3.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

was stopped on the right hand side of the highway, and as soon as she possibly could, she carefully crossed the lanes of traffic to where the male was located.<sup>101</sup>

Officer Cristina Gonzales

At approximately 1930 hours, Officer Gonzales and Officer Roberto Mendez were parked under the freeway at IH-35 and Guadalupe street in separate patrol cars catching up on their reports.<sup>102</sup> Officer Gonzales heard the dispatcher put out a call for a vehicle that had crashed into a house or fence, and heard the call assigned to Officer Arredondo.<sup>103</sup> A few minutes later Officer Gonzales heard Officer Arredondo on the radio and it sounded like she was on the highway or possibly in trouble.<sup>104</sup> The dispatcher then assigned Officer Gonzales and another officer to cover Officer Arredondo.<sup>105</sup> Officer Gonzales told the dispatcher she was on the way and that she had Officer Mendez with her.<sup>106</sup> Officer Gonzales activated her lights and sirens and made her way to Officer Arredondo's location.<sup>107</sup> A short time later, Officer Arredondo reported she was not in trouble so the dispatcher had everyone reduce their speed but continue to the area.<sup>108</sup> The dispatcher also reported several calls coming out for a Hispanic male in a striped polo shirt running into traffic on Highway 90.<sup>109</sup>

As Officer Gonzales traveled westbound on Highway 90 just East of General Hudnell street, she passed a male, (Aguirre), matching the description put out by the dispatcher, standing on the westbound side of the median dividing the east and westbound lanes of Highway 90.<sup>110</sup> She

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<sup>101</sup> *Id.*

<sup>102</sup> Exhibit "F", p. 1.

<sup>103</sup> *Id.* at pp. 1-2.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

saw Aguirre flailing his arms as though he was trying to flag down passing cars.<sup>111</sup> Officer Gonzales witnessed Aguirre cross over the three-foot high median to the eastbound side of Highway 90.<sup>112</sup> Officer Gonzales told the dispatcher she was going to exit and turn around to go eastbound and was going to run Code 2 because she wanted to get to Aguirre before he caused an accident that got someone killed.<sup>113</sup>

Officer Roberto Mendez

At approximately 1915 hours the dispatcher put out a call for a hit-and-run accident at 126 Hillrose, with the individual reportedly running from the scene.<sup>114</sup> A few minutes later, the dispatcher reported getting calls for a bald Hispanic male wearing a striped Polo shirt running across Highway 90 between Zarzamora and Cupples streets.<sup>115</sup> Eventually, the connection was made that the person involved in the hit and run was the same person running across Highway 90.<sup>116</sup> Officer Cristina Gonzales was dispatched to the Highway 90 call so Officer Mendez volunteered to go with her since they were already together catching up on reports.<sup>117</sup> Officer Mendez followed Officer Gonzales as they traveled westbound on Highway 90 to the Cupples street exit.<sup>118</sup> As they drove, Officer Mendez saw a Hispanic male (Aguirre) on the inside shoulder of westbound Highway 90 between Cupples and Zarzamora streets.<sup>119</sup> Officer Mendez saw Aguirre climb over the middle divider onto the eastbound side of Highway 90.<sup>120</sup>

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Exhibit “G”, p. 1.

<sup>115</sup> *Id.* at pp. 1-2.

<sup>116</sup> *Id.* at p. 2.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

The Officers exited at Cupples road, turned around, and entered the ramp to get on eastbound Highway 90.<sup>121</sup> Officer Mendez and Officer Gonzales activated their lights and sirens, and proceeded eastbound on Highway 90.<sup>122</sup> Once they reached the area where Aguirre was located, Officer Mendez saw Officer Gonzales pull up in the inside lane while he pulled up just past her in front of her vehicle.<sup>123</sup> By that time Aguirre had jumped over the divider and was on the westbound side once again.<sup>124</sup> Officer Mendez saw Officer Morgan pull up in front of his vehicle.<sup>125</sup>

### The Apprehension

Officer Gonzales pulled up in the fast lane to the point where Aguirre was located.<sup>126</sup> Officer Mendez pulled up just past Officer Gonzales' vehicle and stopped in front of it.<sup>127</sup> Officer Gonzales exited her vehicle with her gun drawn and yelled commands to Aguirre.<sup>128</sup> Officer Mendez exited his vehicle and drew his TASER as he approached Aguirre.<sup>129</sup> Officer Morgan pulled up to a point on the highway in front of Aguirre, exited her patrol car with her weapon drawn and walked quickly to Aguirre.<sup>130</sup> Aguirre crossed over to the other side of the median.<sup>131</sup> Officer Gonzales crossed to the other side of the median with Aguirre.<sup>132</sup> Aguirre initially refused to comply with the officers' commands but eventually moved over to the middle barrier where Officer Gonzales then handcuffed him.<sup>133</sup> Officers Mendez and Morgan pulled Aguirre over the

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Exhibit "F", p. 3.

<sup>127</sup> Exhibit "G", p. 2.

<sup>128</sup> Exhibit "F", p. 3.

<sup>129</sup> Exhibit "G", p. 2.

<sup>130</sup> Exhibit "E", p. 3.

<sup>131</sup> *Id.*; Exhibit "F", p. 3; Exhibit "G", p. 2.

<sup>132</sup> Exhibit "F", p. 3.

<sup>133</sup> *Id.*

barrier as Gonzales flipped his legs over.<sup>134</sup> Aguirre's head landed on Morgan's right foot and his body continued onto his back perpendicular to the barrier.<sup>135</sup> The Officers stood Aguirre up and moved him to the front of Officer Mendez's patrol vehicle to properly search him.<sup>136</sup> As they were moving, Aguirre resisted by moving from side-to-side which made it difficult to walk and to control him.<sup>137</sup> After getting him to the front of the patrol car, the Officers bent Aguirre's upper body over the hood of the car to attempt to gain more control over him.<sup>138</sup>

Officer Arredondo pulled up behind Officers Gonzales and Mendez' vehicles and witnessed the officers bringing Aguirre over the center median.<sup>139</sup> She approached the scene as the officers had Aguirre bent over the hood of Mendez's patrol car.<sup>140</sup> Due to the dangerous traffic around them, Officer Gonzales told the dispatcher to inform the supervisor they were going to get off the freeway to get to a safer spot so EMS could check on Aguirre.<sup>141</sup> However, Aguirre would not stay still and was moving his upper body aggressively and seemed to be moving away from the Officers.<sup>142</sup> Aguirre had one of his legs out behind him and braced as though he was trying to gain leverage to attempt to push off against the officers and attempt to escape, or physically engage them in some way.<sup>143</sup> Due to Aguirre's continued resistance and failure to comply, the officers were forced to move Aguirre to the ground to place him at a disadvantage, to gain control of him and to keep him from breaking free and running into traffic.<sup>144</sup> Officer Mendez informed the

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<sup>134</sup> Exhibit "E", p. 3; Exhibit "F", p. 3; Exhibit "G", p. 3.

<sup>135</sup> Exhibit "E", p. 3; Exhibit "G", p. 3.

<sup>136</sup> Exhibit "F", p. 3.

<sup>137</sup> Exhibit "E", p. 4; Exhibit "G", 3.

<sup>138</sup> Exhibit "E", p. 4.; Exhibit "G", p. 3.

<sup>139</sup> Exhibit "D", p. 2.

<sup>140</sup> *Id.*

<sup>141</sup> Exhibit "F", p. 4.

<sup>142</sup> *Id.* at p. 3.

<sup>143</sup> Exhibit "E", p. 4.

<sup>144</sup> Exhibit "E", p. 4; Exhibit "F". p. 4; Exhibit "G", p. 4.

dispatcher that a wagon was needed to transport Aguirre from the scene.<sup>145</sup> The Officers did not feel Aguirre could safely be transported from the scene in the back seat of a patrol vehicle due to Aguirre's continued resistance and the possibility Aguirre could break or kick out a window and hurt himself.<sup>146</sup>

Once on the ground, Aguirre started twisting and jerking his head from side to side, and bobbing it up and down.<sup>147</sup> He was also kicking his feet and trying to swing his legs in an attempt to gain leverage to get up.<sup>148</sup> Aguirre was also yelling strange things and calling for his mother.<sup>149</sup> He kept moving his head back and forth on the roadway scratching his face.<sup>150</sup> Officer Gonzales pushed his feet up toward his buttocks to try to control them.<sup>151</sup> Officer Mendez had his right knee on the lower left side of Aguirre's back holding him down.<sup>152</sup> Officer Mendez was using his left hand to hold down Aguirre's left shoulder, while using his right hand to try to hold Aguirre's head down to prevent him from injuring himself.<sup>153</sup>

Officer Benito Juarez arrived on the scene and saw Aguirre on the ground handcuffed with an officer holding his legs.<sup>154</sup> Aguirre was resisting the officers attempting to control him and it appeared Aguirre was trying to kick the officer off his legs.<sup>155</sup>

At some point Officer Arredondo noticed Aguirre stopped breathing.<sup>156</sup> Aguirre was turned over on his back and Officer Mendez performed a sternum rub to try to get a reaction.<sup>157</sup>

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<sup>145</sup> Exhibit "G", p. 3.

<sup>146</sup> Exhibit "E", p. 4; Exhibit "F", p. 4; Exhibit "G", p. 3.

<sup>147</sup> Exhibit "G", p. 4.

<sup>148</sup> *Id.*

<sup>149</sup> Exhibit "D", p. 3.

<sup>150</sup> *Id.*

<sup>151</sup> Exhibit "G", p. 4.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Exhibit "H", p. 2.

<sup>155</sup> *Id.*

<sup>156</sup> Exhibit "D", p. 3; Exhibit "E", p. 5.

<sup>157</sup> Exhibit "G", p. 4.

Aguirre did not react.<sup>158</sup> Officer Juarez, a tactical medic and licensed EMT, confirmed Aguirre wasn't breathing so Juarez ran to his vehicle to get his medical equipment bag.<sup>159</sup> The Officers took the handcuffs off of Aguirre.<sup>160</sup> Officer Juarez retrieved his bag and began trying to revive Aguirre.<sup>161</sup> Juarez placed a king tube in Aguirre's airway and attached it an airbag to force oxygenated air into his lungs while the other officers performed chest compressions.<sup>162</sup> The fire department arrived and continued working on Aguirre until an EMS arrived and transported him to the hospital.<sup>163</sup>

While Aguirre was on the ground he was facing Officer Arredondo who asked him what was going on because she wanted to know what kinds of drugs Aguirre was on.<sup>164</sup> At one point Officer Arredondo noticed Aguirre's lips were blue but she was not concerned because she has seen people on drugs with blue skin color before which was why she asked Aguirre to tell her what drugs he was on.<sup>165</sup> Officer Arredondo didn't see Aguirre having problems breathing because he continued to talk and yell at the officers and for him to do that he had to be breathing.<sup>166</sup> At no time did any of the officers feel Aguirre was having trouble breathing or in medical distress.<sup>167</sup> Aguirre never said anything to indicate he was in medical distress or was having trouble breathing.<sup>168</sup> No one was ever on Aguirre's back or in any way obstructing his airway.<sup>169</sup>

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<sup>158</sup> *Id.*

<sup>159</sup> Exhibit "H", p. 2.

<sup>160</sup> Exhibit "D", p. 3; Exhibit "E", p. 5; Exhibit "F", p.5; Exhibit "G", p. 4.

<sup>161</sup> Exhibit "H", p. 2.

<sup>162</sup> *Id.* at p. 3.

<sup>163</sup> *Id.*

<sup>164</sup> Exhibit "D", p. 3.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Exhibit "D", p. 4; Exhibit "E", p. 5; Exhibit "F", p. 5; Exhibit "G", p. 5; Exhibit "H", p. 3.

<sup>168</sup> Exhibit "G", p. 5.

<sup>169</sup> Exhibit "D", p. 4; Exhibit "F", p. 5.

According to the Bexar County Medical Examiner's Office, Jesse Aguirre died as a result of excited delirium associated with cocaine and ethanol intoxication.<sup>170</sup>

From the time Officer Cristina Gonzales can be heard telling the dispatcher she is going to exit and turn around to go eastbound and was going to run Code 2 because she wanted to get to Aguirre before he got someone killed to the point the dispatcher is told to tell EMS to step it up is approximately ten minutes and twenty seconds.<sup>171</sup>

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<sup>170</sup> Exhibit L, p. 5.

<sup>171</sup> Exhibit "C-1".